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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 411.

THE CITY OF DETROIT, THOMAS B. LUCKING, AND WILLIAM B. THOMPSON, APPELLANTS,

vs.

RALZEMOND A. PARKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED SEPTEMBER 4, 1900.

(17,896.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 15, 1901.

1-3 *Bill of Complaint.*

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

To the judges of the circuit court of the United States for the eastern district of Michigan, southern division, in equity:

Your orator, Ralzemond A. Parker, respectfully shows unto this honorable court:

1. That he is a citizen of the State of Michigan and a resident of the eastern district thereof, and files this his bill of complaint against the City of Detroit, Thomas M. Lucking, and William B. Thompson, citizens and residents of the said eastern district of Michigan.

2. That the said City of Detroit is a municipal corporation organized under a special charter enacted and granted by the legislature of the State of Michigan; that whatever governmental powers it possesses it has received the same by virtue of direct and express grant from the State of Michigan by said charter, and it has and possesses no other legislative capacity except such as is granted by the terms of its said charter; that said charter provides for the grading and paving of streets, making assessments for paying the expenses thereof, and selling the land for non-payment of such assessments; which provisions of said charter, so far as they are material to this controversy, are as follows:

Charter of the City of Detroit.

CHAPTER VII.

SEC. 33. The common council shall have power to make, grade, improve and adorn the public squares, spaces, grounds and
4 parks belonging to or under the control of the corporation, and to control and regulate the same inconsistently with the purposes and objects thereof. It shall have power to establish, open, widen, extend, straighten, alter, vacate and abolish highways, streets, avenues, lanes, alleys and public grounds or spaces within said city; and to grade, pave, repair and otherwise improve the highways, streets, avenues, lanes, alleys or interior public spaces created by the intersection of streets, cross-walks and sidewalks, in said city, with stones, wood, brick or other material; and the common council shall have full power and authority to provide for the paying the costs and expenses thereof, by assessment in such manner as shall be prescribed by law, which assessment shall be a lien, until paid, on the lot, lots or premises on which the same are bounded, and shall be collected in such manner as shall be authorized by law; provided, that the costs and expenses of all repaving and repairing of streets, avenues and highways within the city shall be paid by the city out of the repairing fund created and raised for such purpose. The said common council may also provide for working and improving all highways, streets, avenues, lanes, alleys

and public spaces within said city, and may assess and levy upon the taxable property within said city, and may expend such highway taxes therefor as may be necessary, and may elect whether the same shall be collected in money or labor in such amount as the common council shall prescribe for each ward respectively: Provided, such highway taxes shall not in amount exceed the rates now fixed by law, and the same shall be assessed, levied and collected as other taxes. (As amended by act approved June 24, 1887.)

CHAPTER X.

SEC. 11. The owners or occupants, or parties in interest to any real estate assessed under this chapter, shall be liable to pay every such tax or assessment, and if the same shall not be paid by the first day of February following, or any part thereof, it shall be lawful for the receiver of taxes to cause a notice to be published in the official daily newspaper for the city, once a week for four successive weeks, and posted in three or more public places in each ward, requiring the owners or occupants of, or parties interested in such lands, tenements, hereditaments or premises, to pay such assessment or tax, and that if default be made in making such payment, such real estate will be sold at public auction, at a day and place to be specified in said notice, for the lowest term of years at which any person shall offer to take the same, in consideration of advancing and paying such assessment or tax, with the additions provided in this act, and the cost and expense of advertising. The common council in its discretion may cause said notice, or any part thereof, to be published in a German newspaper in said city: provided, that all publications in languages other than English shall not exceed the sum of twenty-five hundred dollars per annum, now authorized by the charter of the city of Detroit.

SEC. 12. If the owner or occupant of, or parties in interest in such real estate, do not pay such assessment or tax, with costs, additions and charges, within the period above prescribed for the publication of said notice, then the said receiver shall have the power, without any further notice, to cause such real estate to be sold at public auction, for the lowest term of years at which any person shall offer to take the same, in consideration of advancing such assessment or tax, with the costs, additions and charges, and to direct the execution of a proper certificate of such sale to the purchaser thereof; and if such real estate shall not be redeemed within one year after such sale thereof, as hereinafter provided, the controller shall, in the name of the city of Detroit, execute and deliver to, such purchaser, or his assignee, a proper deed for the conveyance of such real estate for the term for which the same was sold; which deed shall be *prima facie* evidence of the regularity of all the proceedings under which the sale was made and said deed was executed, up to the date of such deed. Any person, who, under such deed, may enter into such real estate, and erect or place any building or other property thereon, shall have the right at the expiration of said term, or in case he shall be ousted before the expiration of such term by any person claiming adversely to said deed, then, within

three months after trial, judgment or ouster or ejectment, to remove said buildings or property from said real estate. And in all sales of land for taxes aforesaid, if the purchaser or its assigns, shall die before a deed or other conveyance shall be executed on such sale, the deed may be executed by the controller to and in the name of the purchaser or assigns, who, if living, would be entitled to a deed of conveyance, which deed or conveyance shall vest the title in the heirs or devisees of such deceased persons in the same manner, and liable to like claims of creditors and other persons as if the same had been executed to such deceased person immediately previous to his death, or the executor or administrator may assign the certificate of purchase, and the deed of conveyance may issue to the assignee thereof; and in like case, which have heretofore occurred, the same rule shall apply, and all deeds and conveyances heretofore issued in the name of any deceased person, who, if living at the time of
7 the execution thereof, would have been entitled thereto, shall have like effect as above provided.

SEC. 17. The controller, or in his absence the mayor may execute in the name of the corporation, and under its corporate seal, proper conveyances and certificates of sale of all lands, tenements or hereditaments, sold for assessments or taxes, which, when duly acknowledged and attested by the city clerk, may be recorded as other conveyances of land under the laws of this State.

SEC. 18. It shall be the duty of the controller to bid in for the corporation, at any sale of real estate for assessments or taxes, every lot of land or premises for which no person shall offer to bid; and if any purchaser shall refuse or neglect to pay the sum or sums bid by him, within the time and under the regulations prescribed by the common council, such bids shall enure to the use and benefit of the corporation, if the common council so elect. Upon all such bids by the controller, and all bids as aforesaid, to the use and benefit of the corporation, conveyance and certificates of sale may be executed by the controller to the corporation, acknowledged and attested by the city clerk, and recorded in the same manner as provided in other cases of sale for assessment or taxes. But in all cases of sales, for special assessments, the property so bid in for the corporation may, at the option of the common council be held in trust for the person or contractor in whose behalf such assessment shall have been made, or his assignee, or upon payment to such person or contractor of the amount for which said property shall have been bid in, the city may, as in case of the general tax, become the owner of the tax title or lease thus obtained, and may dispose of the
8 same as if obtained under a like sale for any general tax.

SEC. 20. Assessment-rolls to defray the expense of constructing lateral sewers, side and cross walks, paving, grading, macadamizing, graveling or otherwise improving streets, lanes, or alleys, or for defraying the expense of any local improvements properly payable from the proceeds of special assessments, shall be placed in the hands of the receiver of taxes for payment, as may be provided by ordinance or resolution of the common council for the space of thirty days, after which warrants for the collection of the same may

be issued, and such proceedings for the collection thereof be had as are or shall be prescribed by law, or by any ordinance or resolution of the common council and sales of any real or personal estate for any unpaid assessment shall be made in like manner, and with like effect as in the case of sales for the non-payment of the general tax.

CHAPTER XI.

SEC. 33. Whenever the common council shall order any street, or any portion thereof, to be graded, or graded and paved, or repaved, it may enter into contract for the making of such improvement according to the provisions of this charter, and after the cost and expense thereof has been ascertained it shall cause the same, except the cost of repaving, the cost of cross-walks and of the work at the intersections of cross-streets, to be assessed upon the lots and real estate herein made subject to such assessment as hereafter provided. In case of every contract for paving, the work to be performed thereunder shall be commenced and completed between the first day of May and the first day of November in each year; provided, that when such paving shall not be completed at such time by reason of inclement weather, or other good cause, and from no fault of the contractor, the common council may extend the time for its completion. (As amended by act approved June 24, 1887.)

SEC. 34. For the purpose of such assessment, the lots and parcels of real estate situated on said street, and fronting the portion thereof ordered to be improved, shall constitute one local assessment district, unless the common council, with a view to make the assessment more equal and just, shall subdivide the same into two or more assessment districts. Such subdivision, if made, must be made before asking bids for the work; and in no case shall a city block be divided in making such division. The work for such local assessment district shall be bid for and let separately and such bidding and letting shall show:

First. That cost of all paving and grading, except that of the intersection of the cross-streets and alleys, the cost of the cross-walks at such intersections, and the cost of repaving;

Second. The cost of the grading and paving of each portion of the street included within the lines of intersection of any cross-street and alleys:

Third. The cost of the cross-walks at such intersections; provided, that in case where a side street merely opens upon and does not extend across the street to be paved, the space formed by extending the lines of the former street to the middle of the latter street shall, for the purposes of this act, be treated as the spaces formed by the intersection of cross-streets. All necessary platforms and curbings shall, for the purpose of such assessment, be deemed to be included within the term paving. (As amended by act approved June 24, 1887.)

SEC. 35. The cost and expense of such improvement, except so much thereof as shall be for the work within the lines of intersection of cross-streets and alleys, and for the cross-walks at such intersections, and for repaving streets, avenues, and

highways shall be assessed ratably, according to their extent of front on the lots, parts of lots, or parcels of real estate directly fronting on and within the local assessment district: provided, that if the assessment made on any such lot, or other parcel of land shall, by reason of its triangular or other irregular shape, seem to the common council to be inequitable, said council may direct a just portion of such assessment to be paid from the general road fund. The cost of the work within the lines of the intersection of cross-streets, and also the cost of the cross-walks, shall be paid out of the general road fund. The cost of all repaving of streets, avenues and highways of the city shall be paid out of the repaving fund. The word "front," as used in this act, shall be construed to mean that part of the lot or other parcel of land which directly abuts on that part of the street to be improved. (As amended by act approved June 24, 1887.)

SEC. 36. Whenever in the improvements of a street as aforesaid, any land or real estate which has not been duly platted into city blocks or lots shall be required to be assesses to pay any part of the cost of such improvement, the council shall designate such part or parts thereof for such assessments as shall correspond as near as practicable to the portions of the block or blocks nearest adjacent thereto, subject to like assessment, and the part or parts so desig-dated shall be assessed as near as may be, in the manner herein provided for the assessment of lots.

SEC. 37. The board of assessors shall, when necessary, proceed to make out a list of all the lots or parcels of real estate, consti-
11 tuting a local assessment district, as aforesaid, with the name of the owner or occupant of each lot or parcel of real estate so far as said board can ascertain the same, and also the length of front of each lot or parcel of real estate fronting directly on such improvement. Such board shall then assess the cost and expenses of the work, chargeable as aforesaid upon the property in said list, ratably upon the several lots and parcels of real estate, according to the length of front thereof. When the assessment-roll is thus completed, said board shall give notice, by at least five publications in the city paper, that such roll is completed, and will remain in their office for twelve days from the first publication of said notice, for the inspection of all concerned. At the expiration of said twelve days, said board shall, after any needful revision and correction of such roll, sign the same and report it to the common council. Said council may then confirm the same, or may, when it shall deem necessary, refer the same back to said board for further revision or corrections. And when the same shall be corrected to the satisfaction of said council it shall, by resolution, confirm the same. After such confirmation, such assessment shall constitute a lien, until paid, upon said lots or parcels of real estate, and shall be collected in such manner as may be authorized by law.

SEC. 44. The assessment-roll provided for in section thirty-seven of this chapter shall be made by the board of assessors in four parts, each part to contain a list of the lots or parcels mentioned in said section, with the names of the owners or occupants of each lot or

parcel, and one-quarter of the cost and expense of the work shall be assessed upon each lot or parcel. Such parts of the assessment-roll shall be numbered one, two, three and four, respectively.

12 3. That the common council of the city of Detroit, acting under the authority of the said charter, have enacted ordinances providing for the grading and paving and improvement of streets and making assessments for the expenses thereof and selling land for such assessments, which, so far as they are material to the controversy in this case, are as follows:

Revised Ordinances of the City of Detroit, 1895.

CHAPTER XXXII.

SEC. 1. Streets, or parts thereof, may be ordered to be graded and paved, by resolution of the common council, on motion of any member thereof, at a total cost to be expended in any one year not exceeding $200,000. (As amended December 30, 1889.)

SEC. 2. Streets, or parts thereof, may also be ordered to be graded and paved, by resolution of the common council, on petition of parties owning a majority of property fronting on the line of such street, or the part thereof proposed to be paved. Such primary petition shall pray generally that the street, or a specified part thereof, be graded and paved; and the preferences of the petitioners, or other parties interested, as to the kind of pavement they desire, may be shown by subsequent petition.

SEC. 3. When a street, or part thereof, is ordered to be graded and paved, the resolution shall declare generally that it is ordered that the street, within specified limits, be graded and paved, and shall direct what kind of pavement may be advertised for, and that for the purpose of assessment to defray the expense of such improvement, the lots and parcels of real estate situated upon such street, and fronting on the portion thereof ordered to be improved,

13 shall constitute a local assessment district; or two or more assessment districts may be thus established, of no less extent than one block each, in the discretion of the council.

SEC. 4. The city engineer, upon the passage of the resolution establishing a local assessment district, as provided in section 3 shall forthwith proceed to ascertain the quantities of work and material requisite to the improvement so ordered, and to estimate and apportion on the expense of advertising and blanks, and of inspection of the work during its progress, and shall make a report of the same in duplicate, over his signature, as near as conveniently may be, according to form "A" hereto attached, and deliver one to the assessor and one to the board of public works.

SEC. 5. It shall be the duty of the board of public works, as soon as they receive the report of the engineer, in section 4 above provided for, to proceed to advertise fifteen days, unless otherwise ordered by resolution of the common council, in the official city paper, for bids for the making — such improvements, with the kinds of pavements they shall have been directed to advertise for by the

council, and as required by the city charter. Such advertisement shall specify a time and place when and where such bids shall be opened; at which time and place such bids shall be opened by the board of public works, in the presence of such persons as shall choose to attend; and the board shall then report to the council all the bids received for each kind of pavement advertised for, designating the lowest responsible bidder. (As amended July 14, 1884.)

SEC. 6. Upon presentation of the report of the board of public works, in section 5 above provided, the common council may, by resolution, direct said board to contract with such of the lowest responsible bidders reported by the board, as it shall see fit; or direct further advertisement for the same, or different kinds of pavement, in its discretion; and then direct said board to contract with such lowest bidder, for such kind of pavement as is deemed expedient to adopt for the improvement.

SEC. 7. Upon the passage of the resolution in section 6 above provided, the board of public works shall forthwith proceed to enter into a contract with the party designated therein, and take sufficient security for its faithful performance. Such contract shall, among other things, provide, etc.

SEC. 8. It shall be the duty of the board of assessors immediately on receiving the report of the engineer, in section 4 of this ordinance provided for, forthwith to proceed and make a list of property in the local assessment district which shall have been established by the common council, according to section 3 of this ordinance, as required by section 37 of chapter 11 of the charter of the city of Detroit, and shall have such list in readiness to make the assessment required by said section 37 by the time the contract mentioned in section 7 of this ordinance shall have been confirmed by the council, and immediately upon such confirmation last mentioned, he shall compute the total cost of the improvement including expenses reported by the engineer, and proceed to make assessment of the same, and advertise and correct the assessment and report to the common council as in said section 37 of said amendments to the charter is required, and the common council shall proceed, as in said section 37 it is provided, to the confirmation of such assessment, and upon confirmation of such assessment-roll the city clerk shall deliver the same to the controller. (As amended June 7, 1893.)

SEC. 9. The controller, upon receipt of said assessment-roll in the last section provided, shall make the necessary entries in his books, as required by the charter and ordinances, and may retain the same in his office, in his discretion, until work under the contract which shall have been made is commenced; he shall at that time or at such time previous to the commencement of the work as he shall deem expedient, deliver such assessment-roll to the receiver of taxes; and thereafter, such proceedings shall be taken thereupon as are provided in the charter and ordinances for the collection of special assessments. (As amended December 30, 1889.)

Chapter XXXIII.

Sec. 1. Whenever the common council shall have resolved to pave any street or streets, the city officers shall proceed according to present ordinance, except as hereinafter provided. The city engineer shall add the estimated cost of blank bonds to his estimates assessable against lots fronting the improvement. The board of public works shall insert in their advertisements for proposals, notice, that contractors shall be paid in bonds or the proceeds thereof if such bonds are purchased by the sinking fund commissioners according to law, and shall insert provisions in the contracts for paving that contractors shall be thus paid. The assessors shall, in making assessments, proceed according to chapter 35 of the Revised Ordinances of the City of Detroit for the Year 1890, as amended, except that they shall make the assessment-rolls in four parts for each assessment district, according to section 4 of chapter 11 of the charter of the city of Detroit as amended by an act approved May 4th, 1893, and thereupon the controller shall procure blank bonds for the amount of such assessments, which bonds, after being duly executed in accordance with law, shall be delivered to the contractor
16 within thirty days after his completion of the pavement of the street according to specifications and its acceptance by the board of public works and the common council; provided, however, that the sinking fund commissioners shall have the privilege, if they shall so elect, to purchase said bonds for the sinking fund, in which case the proceeds for such sales to the amount of the said assessment shall be paid to said paving contractor. (As amended June 7, 1893.)

Sec. 2. Upon the receipt of the assessment-roll, as above provided, the receiver of taxes shall proceed to give notice by advertisement for five days in the official paper of the city that such roll is left with him for collection and that the assessments therein specified as part 1, may be paid to him at any time within thirty days after the first publication of such notice, without costs and without interest; that the assessments therein specified as parts 2, 3, and 4 may be paid to him at any time within sixty days after the first publication of said notice without cost, and without interest, and that the time to pay the assessments contained in either parts 2, 3 and 4 of such roll may be respectively extended as follows, viz: For the payment of the assessment in part 2, one year from the date of the first publication of such notice; that in part 3 two years, and that in part 4 three years from said date, upon payment of interest at 4 per cent. per annum on any of the said three parts of said assessment-roll in advance, for the respective periods above named at any time before the expiration of the said sixty days, and that after the expiration of the said thirty days for said part first, and said sixty days for said second, third and fourth parts as specified in such notice, the said unpaid assessments, excepting these upon which interest
17 shall have been prepaid according to the terms of such notice, and that said assessments upon which interest has been prepaid at the expiration of the time for which interest has been

paid, will be collected at once according to law, with five per cent. (5) penalty additional for costs of collection, and thereafter at the rate of one per cent. (1) per month for the first six months, and thereafter at the rate of seven per cent. (7) per annum from the date of said notice. (As amended June 7, 1893.)

SEC. 4. The receiver of taxes shall retain the several parts of said assessment-roll in his office for the times hereinafter stated, during which times he shall receive and credit thereon either principal or interest as the same shall be paid that is to say, he shall retain part 1 of said roll thirty days from the date of the receiver's notice, provided for in section 3 of this ordinance; he shall retain parts 2, 3 and 4 thereof sixty (60) days from said date; provided, that the parts 2, 3, and 4 upon which the interest has been prepaid as above provided he shall retain until the expiration of the time for which such interest has been paid. Said receiver shall, at the expiration of said sixty (60) days, notify the controller what portions of parts 2, 3 and 4 are unpaid. Said receiver shall proceed in the collection of parts 2, 3 and 4 as in the collection of part 1 and according to the provisions and requirements of other ordinances of the city relating to the collection of special assessments generally. And the proceeds of all collections upon said assessment-rolls, together with interest and fees thereon, shall be paid into the street-paving sinking fund hereinafter provided for. (As amended June 7, 1893.)

SEC. 5. A special sinking fund shall be created, to be de-
18 nominated the "Street-paving sinking fund" into which all moneys collected on said assessment-rolls shall be paid, and shall be credited to the street paved and assessed when paid in, and all bonds issued for the paving of said street shall be paid out of said fund and charged accordingly. (As amended June 7, 1893.)

SEC. 7. Any person having failed to pay the interest on parts 2, 3, and 4 in advance, as hereinbefore provided, may pay such interest at any time before a sale of the premises for such assessment, together with the costs and expenses of collection, if any, incurred on such assessment, also the interest thereon at the rate of one per cent. (1 per cent.) per month for the first six months from the date of the first publication of the notice provided for in section 3 and thereafter at the rate of seven per cent. (7 per cent.) per annum and such payment shall have the same effect as if paid in advance. (As amended June 7, 1893.)

CHAPTER XXXIII.

SEC. 1. Whenever any assessment-roll for any special assessment has been approved and confirmed by the common council, the same shall be deposited with the receiver of taxes, who shall retain the same in his office for the period of thirty days after the acceptance of the work for which said roll was made, or such further period of time as the common council shall, by resolution, direct, during which period the persons assessed may pay to said receiver the respective amounts of their assessments, without additional costs.

SEC. 2. At the expiration of the said period of time, as prescribed in section one (1), the receiver of taxes shall add five (5) per cent. to

every unpaid tax, and thereafter such tax shall bear ten (10) per cent. interest per annum until paid.

SEC. 5. Sales of any real or personal estate, for any unpaid assessment, shall be made in like manner, and with like effect, as in case of sales for the non-payment of the general tax.

CHAPTER XXVII.

SEC. 1. Whenever any general tax or assessment on any lands, tenements, hereditaments or premises in said city shall remain due and unpaid, after publication of notice by the receiver of taxes, as required by the provisions of section nine (9) chapter ten (10) of the charter, and after the expiration of the time therein mentioned, it shall be the duty of the receiver of taxes, on behalf of the common council, to proceed and sell such lands, tenements, hereditaments, and premises in the manner herein prescribed. (As amended July 14, 1884.)

SEC. 2. The receiver of taxes shall, on or before the first day of May, in each year, make out a list of all such lands, tenements, hereditaments or premises, the names, if known, of the owners or occupants of, or parties in interest, and the amount of the unpaid tax, or assessment due thereon, and shall, on behalf of the common council, cause to be published in the daily newspaper published by the printer for the city, once a week for four successive weeks, such list with a notice thereto attached, requiring the owners, or occupants of, or parties in interest in such lands, tenements, hereditaments or premises, to pay such assessment or tax; and further notifying them that if default be made in making such payment, any such real estate will be sold at public auction, at a day and place therein to be specified, for the lowest term of years at which any person will offer to take the same, in consideration of advancing and paying the sum assessed or taxed on the same, with the costs and charges in the premises, and shall, at the same time, cause said list, with said notice thereto attached, to be posted in three or more public places in each ward in said city. (As amended July 12, 1870.)

SEC. 3. If the owner, or owners, occupant or occupants, party or parties in interest, in any such real estate, do not pay any such assessment or tax, with the costs and charges thereon, within the period above prescribed for the publication of said notice, then the receiver of taxes, on behalf of the common council, at the place, and on the day mentioned in such notice, shall commence the sale of such lands, tenements, hereditaments and premises, at public auction and shall continue the same from day to day (Sundays excepted) until the same is sold for the lowest term of years at which any person shall offer to take the same, for the purpose, and in the manner already above expressed; but each lot, or parcel of lot, owned by any one person, or set of persons, against whom any such tax or assessment has been made, shall be sold by itself.

4. That he is and has been the owner and is now and has been since August 1st, 1893, in possession of lot one hundred and three

(103) of McLaughlin Bros.' subdivision of outlot four (4) and the southerly one hundred fifty (150) feet of outlot five (5) of the subdivision of quarter section forty-five (45) of the 10,000-acre tract, being situated in the city of Detroit, in said eastern district of Michigan, southern division, and that said lot and premises *is* of the value of about twelve thousand dollars ($12,000) and upwards, and has a rental value of eight hundred dollars ($800.00) per annum.

5. That on the 13th day of December, 1892, at a regular meeting held by the common council of the city of Detroit, the following resolution was introduced by Ald. Seeley, to wit:

"Resolved, That Woodward avenue be, and the same is hereby, ordered to be graded and paved from north curb line of
21 Pallister avenue to the center of Joy road, and that said avenue within said limits be paved with asphalt sixty (60) feet wide, Berea or Medina curbstone five (5) inches thick, and not less than six (6) feet wide, according to the specifications adopted by the common council and the estimates of the city engineer; and it is hereby declared that this action is had under that clause of the city charter authorizing the common council to annually enter into contracts for the grading, paving, etc., of streets, alleys, and public places upon petition of the holders of the larger portion of the real estate directly abutting upon the portions of the street or alley proposed to be improved.

"Resolved, That for the purpose of assessment for defraying and paying the cost of grading, paving, and curbing Woodward avenue from the north curb line of Pallister avenue to the center of Joy road, the lots and parcels of real estate situated on Woodward avenue embraced within said limits and forming the portion of said avenue ordered to be improved by said grading, paving, etc., shall be, and the same are hereby, constituted and declared to be one local assessment district.

"Resolved, That the city engineer be, and is hereby, ordered and directed to ascertain and report to both the city assessor and board of public works, according to the form and the ordinance in such case made and provided, the quantities of work and materials required for grading and paving said Woodward avenue within said limits, as follows:

"1. The quantity of all grading, paving, curbing, and other work on said Woodward avenue within said limits excepting the portions of said street constituting the intersections of cross-streets and alleys.

"2. The quantity of all grading, paving, and other work
22 of each portion of said Woodward avenue included and embraced within the lines of intersection of the cross-streets and alleys with said Woodward avenue.

"3. The quantity of all cross-walks at each intersection of said Woodward avenue with the cross-streets and alleys.

"Resolved, That as soon as the board shall receive the report of the city engineer showing the quantity of the grading, paving, curbing, cross-walks, material, and other work required, as above provided, on said Woodward avenue, said board shall, and is hereby, ordered

and directed to advertise five days for proposals for grading, paving, cross-walks, curbing and materials, and improving said Woodward avenue in accordance with the resolutions and proceedings above provided, and the provisions of the charter and ordinances of the city of Detroit."

Which resolution was laid upon the table.

6. That at a regular meeting of the common council of the city of Detroit, held on the 20th day of December, 1892, the following action was taken:

"Ald. Seeley moved to take from the table a resolution laid over December 13, 1892, ordering the paving of Woodward avenue from Pallister avenue to the Joy road; which motion prevailed. Ald. Vernor moved to insert 'brick on concrete, and cedar blocks on concrete;' which motion prevailed. The motion as amended was then adopted as follows: Yeas, 27; nays, none."

7. That the contract for paving said section of Woodward avenue from Pallister avenue to the Joy road was let to Otto E. C. Gulich for the sum of fifty-five thousand six hundred thirty-four dollars and seventy-eight cents ($55,634.78).

8. That an assessment-roll No. 246, for defraying the ex-
23 pense of grading said section of Woodward avenue from Pallister avenue to the Joy road, was made in four parts by the assessors of the city of Detroit, in accordance with the charter and ordinances of said city, except that no certificate of said assessors was attached to said roll, and on the ninth day of August, 1894, said roll was confirmed by the common council, and that said lot No. one hundred three (103) of McLaughlin Bros.' subdivision of outlot four (4) and the southerly one hundred fifty (150) feet of outlot five (5) of the subdivision of quarter section forty-five (45) of the 10,000-acre tract, being situated in the city of Detroit, in said eastern district of Michigan, southern division, was assessed on said roll for the aggregate sum of four hundred ninety-one dollars and forty-four cents ($491.44), a copy of which roll, so far as it effects said lot 103, together with a copy of the notice of review thereof and proof of publication of said notice, is hereto attached, marked "Exhibit 1," and is hereby made a part of this bill of complaint.

9. That the entire cost and expenses of paving said section of Woodward avenue from Pallister avenue to Joy road, amounting to $55,634.78, except the cost of paving the intersection of streets and alleys, *was* assessed upon the property abutting upon said Woodward avenue between Pallister avenue and Joy road, including said lot No. 103, *pro rata*, according to the frontage thereof on said Woodward avenue, without any regard to the benefits accruing to said several descriptions of property by reason of such grading and paving.

10. That on the 25th day of March, 1897, said lot 103 was sold for the taxes assessed thereon for the paving of Woodward avenue and
bid off to the city for ninety-nine years; that the time for
24 redemption from said sale has expired, and the title of the city thereto has become absolute, and that the said city of

Detroit now claims the title to and the right to possession of said lot under said sale for said period of ninety-nine years.

11. That on the 18th day of February, 1896, at a regular meeting held by the common council of the city of Detroit, the following communication was received from the board of public works in regard to paving Blaine avenue from Woodward avenue to Hamilton boulevard:

"To the honorable the common council.

GENTLEMEN: The board of public works, to whom was referred the petition of McLaughlin Bros. and others for the paving of Blaine avenue from Woodward avenue to Hamilton boulevard, respectfully report that the petitioners are the owners of the greater number of feet of real estate fronting on the street proposed to be improved.

"The board therefore recommends that the prayer of the petitioners be granted, and that Blaine avenue be paved within the limits stated with cedar blocks on concrete foundation, 26 feet wide; estimated cost, $11,440.00.

Respectfully submitted.

JACOB GUTHARD.
JOHN MVICAR.
D. W. H. MORELAND."

Which report was accepted.

12. That on the 18th day of February, 1896, at a regular meeting of the common council of the city of Detroit, the following resolution was introduced by Ald. Bleil:

"Resolved, That Blaine avenue be, and the same is hereby, ordered to be graded and paved from Woodward avenue to Hamilton boulevard, and that said avenue within said limits be paved with cedar blocks on concrete foundation 26 feet wide, according to the specifications adopted by the common council and the estimates of the city engineer; and it is hereby declared that this action is had under that clause of the city charter authorizing the common council to annually enter into contracts for the grading, paving, etc., of streets, alleys, and public places on the petition of the holders of the larger portion of the real estate directly abutting upon the portions of the street or alleys proposed to be improved.

"Resolved, That for the purpose of assessment for defraying, and paying the cost of grading, paving, and curbing Blaine avenue from Woodward avenue to the Hamilton boulevard the lots and parcels of real estate situated on said avenue embraced within said limits and fronting the portion of said avenue ordered to be improved by said grading, paving, etc., shall be, and the same are hereby, constituted and declared to be one local assessment district.

"Resolved, That the city engineer be, and is hereby, ordered and directed to ascertain and report to both the city assessor and board of public works, according to the form and the ordinance in such case made and provided, the quantities of work and materials re-

quired for grading and paving said avenue within the said limits as follows:

1. The quantity of all grading, paving, curbing, and other work on said avenue within said limits, excepting the said portion of said street constituting the intersections of cross-streets and alleys.

2. The quantity of all grading, paving, and other work of each portion of said avenue included and embraced within the
26 lines of intersection of the cross-streets and alleys with said avenue.

3. The quantity of all cross-walks at each intersection of said avenue with the cross-streets and alleys.

"Resolved, That as soon as the board shall receive the report of the city engineer, showing the quantity of the grading, paving, curbing, cross-walks, material, and other work required as above provided on said avenue, said board shall, and is hereby ordered and directed to, advertise for five times for proposals for grading, paving, cross-walks, curbing, and materials, and improving said avenue, in accordance with the resolutions and proceedings above provided and the provisions of the charter and ordinances of the city of Detroit."

Which resolution was adopted by the following votes: Yeas, 27; nays, none.

13. That the contract for paving said Blaine avenue from Woodward avenue to Hamilton boulevard was let to Patrick Dee for the sum of eleven thousand four hundred sixty-two dollars and thirty-two cents ($11,462.32).

14. That an assessment-roll, No. 363, for defraying the expense of grading and paving said Blaine avenue from Woodward avenue to Hamilton boulevard was made in four parts by the assessors of the city of Detroit, in accordance with the charter and ordinances of said city, and on the 5th day of May, 1894, said assessment-roll was confirmed by the common council of the city of Detroit, and that said lot No. 103 of McLaughlin Bros.' subdivision of outlot 4 and the southerly 150 feet of outlot 5 of subdivision of quarter section 45 of the 10,000-acre tract, in said city of Detroit, was assessed on said roll for the aggregate sum of four hundred forty-two dollars
27 and sixty-eight cents ($442.68), a copy of which roll, together with a copy of the certificate of the assessors and a copy of the notice of review of assessment and proof of publication of the same, so far as they effect the said lot 103, are hereto attached and marked "Exhibit 2," and are hereby made a part of this bill of complaint.

15. That the entire cost and expense of paving said Blaine avenue from Woodward avenue to Hamilton boulevard, amounting to eleven thousand four hundred sixty-two dollars and thirty-two cents ($11,462.32), except the cost of paving the intersection of streets and alleys, was assessed upon the property abutting on said Blaine avenue between Woodward avenue and Hamilton boulevard, including the said lot 103, *pro rata*, according to the frontage thereof on said Blaine avenue, and without any regard to the benefits accruing to

such several descriptions of property by reason of such grading and paving.

16. That said lots fronting on said Blaine avenue are not of uniform depth, said lot 103 being sixty-eight and $\frac{89}{100}$ (68.89) feet in depth, and all the other lots on said street being one hundred twenty-seven and $\frac{1}{2}$ ($127\frac{1}{2}$) feet in depth.

17. That on the 25th day of March, 1897, said lot was sold for the taxes assessed on part one of said roll for the paving of Blaine avenue, and bid off to the city of Detroit for ninety-nine years; that the time for redemption from said sale has expired, and the title of the city thereto has become absolute, and that the said city of Detroit now claims the title to and the right to possession of said lot under said sale for said period of ninety-nine years.

18. That on the 28th day of March, 1898, said lot was sold for the taxes assessed on part two of said roll for the paving of Blaine avenue, and bid off to the city of Detroit for ninety-nine years;
28 that the time for redemption from said sale has expired and the title of the city thereto has become absolute, and that the said city of Detroit now claims the title to and the right to possession of said lot under said sale for said period of ninety-nine years.

19. That on the 17th day of April, 1899, said lot was sold for the taxes assessed on part three of said roll for the paving of Blaine avenue, and bid off to the city of Detroit for ninety-nine years; that the time for redemption from said sale will expire on the 17th day of April, 1900.

20. That on the 19th day of March, 1900, said Thomas M. Lucking, receiver of taxes of said city of Detroit, gave notice that he would on the 16th day of April, A. D. 1900, sell said lot 103 for the taxes assessed on part four of said assessment-roll, which notice was published in the "Detroit Journal," a newspaper published in the city of Detroit, in said county of Wayne, on the 19th day of March, 1900. A copy of said advertisement, so far as it effects said lot 103, is hereto annexed and marked Exhibit "3."

21. Your orator further shows that the said several assessments and sales constitute a cloud upon the title of your orator to said lot 103.

22. Your orator further shows that the said charter of the city of Detroit and the ordinances enacted in pursuance thereof, which provide for the assessment of the entire cost and expense of the grading and paving of said streets upon the property abutting on the part of said streets so graded and paved, including your orator's said property, *pro rata*, according to the foot front, and making said assessment a lien on said property, and for the sale of the land for
29 such assessment, are in contravention of and violation of the rights of your orator under the fourteenth amendment of the Constitution of the United States in this, that they deprive your orator of property rights without due process of law.

23. Your orator further shows that the said charter and ordinances of the city of Detroit providing for the grading and paving of streets are in violation of the rights of your orator under the fourteenth amendment of the Constitution of the United States in

this, that they require the cost and expense of such grading a paving to be assessed upon the property abutting on the part of t street so graded and paved *pro rata*, according to the foot fro without any reference to the benefits accruing to such property reason of such grading and paving.

24. Your orator further shows that the said charter and or nances of the city of Detroit providing for the grading and pavi of streets are in violation of the rights of your orator under t fourteenth amendment to the Constitution of the United States this, that they do not provide for any hearing or review of asse ments at which the property-owner can show that his property not benefited to the amount of such assessment.

25. Your orator further shows that the several resolutions of th common council ordering said street to be graded and paved and th assessment to be made therefor are in violation of the rights of you orator under the fourteenth amendment to the Constitution of th United States in this, that they do not provide that such assessment shall be made according to the benefit to the property assessed but that the same shall be made arbitrarily, according t the foot front, as provided in said charter and ordinances.

26. Your orator further shows that by the said charter and ordi nances of the city of Detroit it is provided that the receiver of taxe and city treasurer shall enforce the lien created by and collect the assessment for grading and paving by selling the land therefor, an that any proceedings taken to sell your orator's said land for said several assessments will be taken by and under the charge and direction of said receiver of taxes and city treasurer and pursuant to the provisions of said charter and ordinances.

27. Your orator further shows that he is informed and believes and alleges the fact to be that the said city of Detroit claims the title to said lot 103 under and by virtue of said several sales for said assessments and is attempting to and intends, under the provisions of said charter and ordinances, to sell and convey to others its title to said lot 103, unless restrained therefrom by this honorable court.

28. Your orator further shows that said city of Detroit is advertising and intends to sell said lot 103 for part four of the assessment on said lot for the paving of said Blaine avenue, and will sell the same, as your orator alleges, unless restrained by this honorable court.

28½. Your orator further shows that the charter and ordinances of said city of Detroit require assessment-rolls for paving to be made out to the owner or occupant of the premises assessed, and that your orator was the owner and in open and notorious occupancy of said lot 103 at the time said Blaine avenue and Woodward avenue were paved, as aforesaid, and that said rolls were not made out to your orator as owner or occupant of said premises, but were assessed to one F. W. Dickinson, who has not now, nor ever had, any interest in and to said lot 103, nor any color of title thereto, and that the said assessments and sales of said lot 103 are in violation of said charter and ordinances and are void.

29. Your orator further alleges that the matter in dispute between

the parties in this suit exceeds the sum of ten thousand dollars ($10,000.00), exclusive of interest and costs, and arises under the Constitution of the United States.

31 30. Your orator further shows that the said City of Detroit is a municipal corporation, organized under said special charter granted by the legislature of this State, and that the said City of Detroit is a citizen of the State of Michigan and a resident of the eastern district, southern division thereof, and that Thomas M. Lucking is the receiver of taxes of the said city of Detroit and a citizen of the State of Michigan and a resident of the eastern district, southern division thereof; that William B. Thompson is the treasurer of said city of Detroit and a citizen of the State of Michigan and a resident of the eastern district, southern division thereof, and that your orator makes the said City of Detroit, Thomas M. Lucking, and William B. Thompson defendants to this his bill of complaint.

31. Your orator therefore prays that the said defendants, The City of Detroit, Thomas M. Luching, receiver of taxes of the city of Detroit, and William B. Thompson, treasurer of said city of Detroit, may, without oath (their answers under oath being hereby expressly waived), full, true, and perfect answer make to all and singular the matters herein contained and stated as fully and particularly as if the same were repeated and they were thereto distinctly interrogated.

32. That the said several sales of said land to the City of Detroit for said assessments and the title of said city under and by virtue of said sales may, by the order of this honorable court, be declared to be null and void and be set aside and the cloud created thereby upon the title of your orator to said lands may be removed, and that the said assessments of taxes on said land may be declared to be null and void and be set aside and the cloud created thereby upon the title of your orator to said land may be removed, and that the said City of Detroit and Thomas M. Lucking, receiver of taxes of said city of Detroit, and William B. Thompson, treasurer

32 of said city of Detroit, may, by an injunction issued out of and under the seal of this court, be perpetually restrained from selling and conveying or attempting to sell and convey said lot 103, hereinbefore described, and from advertising and selling or attempting to advertise and sell said lot 103 for said taxes assessed thereon, and that your orator may have such other and further relief in the premises as may be agreeable to equity and good conscience and as to the court shall seem meet.

33. And that in the meantime and until the further order of this court the said City of Detroit, Thomas M. Lucking, receiver of taxes of said city of Detroit, and William B. Thompson, treasurer of said city of Detroit, their agents and attorneys, and each and every of them, be restrained and enjoined as above prayed.

34. May it please the court to grant unto your orator the writ of subpœna, to be directed to the said City of Detroit, Thomas M. Lucking, receiver of the said city of Detroit, and William B. Thompson, treasurer of said city of Detroit, commanding them and each of

them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before this honorable court, then and there to answer all and singular the premises, and to stand to and abide by such order and decree therein as to the court shall seem meet.

35. May it please the court to grant unto your orator the people's writ of injunction, to be directed to the said City of Detroit, Thomas M. Lucking, receiver of taxes of said city of Detroit, and William B. Thompson, treasurer of said city of Detroit, restraining and
33 enjoining them and each of them, and their solicitors, attorneys, counsellors, agents, and servants, from in any manner whatever selling and conveying, or attempting to sell and convey, said lot 103, and from in any manner attempting to collect said assessments from your orator; and your orator will ever pray, etc.

RALZEMOND A. PARKER,
Complainant.

BACON & YERKES,
Solicitors for Complainant.

Business address, 709, 710 Hammond building, Detroit, Michigan.

STATE OF MICHIGAN,
Eastern District of Michigan, County of Wayne, } ss:

On this 31st day of March, A. D. 1900, before me personally came the above-named Ralzemond A. Parker and made oath that he has read the foregoing bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

ELLIOTT J. STODDARD,
Notary Public, Wayne County, Michigan.

34 EXHIBIT "1."

"Assessment-roll No. 246, for defraying the expense of grading and paving in paving assessment district No. 246, said district being that portion of Woodward avenue from the north curb line of Pallister avenue to the center line of Joy avenue, city of Detroit.

(Name) McLaughlin Bros.
(Lot) 103, McLaughlin Bros.' sub. of O. L. 4 and the s'ly 150 ft. of O. L. 5 of sub. of quarter sec. 45, 10,000-acre tract.
(Feet front) 68.89.

Part 1.

Cost of paving	$121.47
Cost of blanks	1.39
Total	$122.86

Part 2.

Cost of paving	$121.47
Cost of blanks, etc	1.39
Total	$122.86

Part 3.

Cost of paving	$121.47
Cost of blanks, etc	1.39
Total	$122.86

Part 4.

Cost of paving	$121.47
Cost of blanks, etc	1.39
Total	$122.86

OTTO E. C. GULICH, *Contractor.*
WM. T. DUST,
FRED E. FARNSWORTH,
J. C. McDONALD,
Board of Assessors."

Proof of Publication of Notice.

"BOARD OF ASSESSORS' OFFICE, DETROIT, *March* 22, 1893.

Paving notice No. 246.

Woodward avenue from Pallister avenue to Joy avenue.

To Edwin B. Robinson, —— Chandler, John Atkinson, R. S. Mason, J. F. Koch, McLaughlin Bros., Albert L. Stevens, Joseph Marshall, W. A. Carlson, Bela Hubbard, Henry A. Haigh, —— Petry, J. L. McLaughlin, J. C. Batchelder, Thomas Fraser, Mrs. Hattie Owen, Bartlett, Owen & Bartlett, Thomas & Wagner, Charles D. Standish, C. Carpenter, De Witt H. Taylor, Hunt & Leggett, M. M. Fisher, Thomas Calvert, John J. Dodds, Alfred Lucking, August Helbig, Anna M. Smith, —— Mack, William Darmstaetter, guardian; William Tait, J. H. Potts, Philip H Martz, August Klatt, Carl E. Schmidt, and to all other persons owning, occupying, or otherwise interested in any of the lots and premises fronting on Woodward avenue, in said city of Detroit, within the limits hereinafter mentioned:

The common council of the city of Detroit having ordered so much of Woodward avenue from the north curb line of Pallister avenue to the center line of Joy avenue to be graded and paved, notice is hereby given that an assessment has been made upon all the lots and premises fronting on said Woodward avenue and liable to be assessed for said improvement under the provisions of the city charter, and that a roll of said assessment is now completed and will

remain at the assessor's office, in the city of Detroit, from the date hereof until the 4th day of April next, for the inspection of all persons concerned therein.

WM. T. DUST,
President of the Board of Assessors.

STATE OF MICHIGAN, }
County of Wayne, } *ss:*

M. H. Garrells, being duly sworn, deposes and says the annexed printed copy of a notice was taken from the "Detroit Tribune," a newspaper printed and circulated in said county and State,
36 and that said notice was published in said newspaper on the 23rd, 24th, 25th, 27th, and 28th of March, A. D. '93; that he is the foreman of the printers of said newspaper and knows well the facts stated herein.

M. H. GARRELLS.

Subscribed and sworn to before me this 29th day of March, A. D. 189–.

JOHN A. RUSSELL,
Notary Public in and for said County.

37 EXHIBIT "2."

Assessment-roll No. 363, for defraying the expense of grading and paving Blaine avenue, in paving assessment district No. —, said district being constituted of the lots and parcels of real estate fronting that portion of said Blaine avenue from the west curb line of Woodward avenue to the east curb line of Hamilton boulevard, city of Detroit.

Lot 103, McLaughlin Bros.' sub. of O. L. 4 and the s'ly 150 ft. of O. L. 5 of sub. of quarter sec. 45, 10,000-acre tract.
(Feet front) 200.

Part 1.

Cost of paving	$108.13
Cost of blanks	2.54
Total	$110.67

Part 2.

Cost of paving	$108.13
Cost of blanks	2.54
Total	$110.67

Part 3.

Cost of paving	$108.13
Cost of blanks	2.54
Total	$110.67

Part 4.

Cost of paving	$108.13
Cost of blanks	2.54
Total	$110.67

(*Certificate Attached to Roll.*)

We hereby certify that this assessment-roll has been prepared pursuant to the resolution for the grading and paving of Blaine avenue from the west curb line of Woodward avenue to the east curb line of Hamilton boulevard, adopted by the common council
38 March 17th, 1896, and as required by the provisions of the charter and ordinances of the city of Detroit; that the same containes a list of lots and parcels of real estate constituting the local assessment district in said roll mentioned, with the names of the owners and occupants of each lot and parcel of real estate so far as we can ascertain the same, and also the length and front of each lot and parcel of real estate fronting directly on such improvement; that we have assessed the cost and expense of said work chargeable upon the property of said list ratably upon the several lots and parcels of real estate according to the length of front thereof.

We further certify that we have given the notice required by law that said roll was duly completed and would remain in our office for twelve days from the first publication of said notice for the inspection of all concerned, and that said roll has remained in our office for said period of twelve days from and after the first publication of said notice for such inspection, and that all needful revision and correction thereof has been made.

In witness whereof we have hereunto signed our names this 5th day of May, 1896.

WM. T. DUST,
FRED E. FARNSWORTH,
J. C. McDONALD,
Board of Assessors.

BOARD OF ASSESSORS' OFFICE, DETROIT, *April 21st*, 1896.

Paving Notice No. 363, Blaine Avenue.

To F. W. Dickinson *et al.* and all other persons owning, occupying, or otherwise interested in any of the lots and premises fronting on Blaine avenue, in said city of Detroit, within the limits hereinafter mentioned:

39 The common council of the city of Detroit having ordered so much of Blaine avenue from the west curb line of Woodward avenue to the east curb line of Hamilton boulevard to be graded and paved, notice is hereby given that an assessment has been made upon all the lots and premises fronting on said Blaine avenue and liable to be assessed for said improvement under the provisions of the city charter, and that a roll of said assessment is

now completed and will remain at the assessors' office, in the city of Detroit, from the date hereof until the 5th day of May next for the inspection of all persons concerned therein.

BOARD OF ASSESSORS,
By WM. T. DUST, *President.*

STATE OF MICHIGAN, }
County of Wayne, } *ss:*

Albert S. Harris, being duly sworn, deposes and says the annexed printed copy of a notice was taken from the "Detroit Tribune," a newspaper printed and circulated in said State and county, and that said notice was published in said newspaper on the 21st, 22nd, 23rd, 24th, and 25th days of April, 1896; that he is the foreman of the printers of said newspaper and knows well the facts stated herein.

ALBERT S. HARRIS.

Subscribed and sworn to before me this 25th day of April, 1896.

ISAAC M. BATES,
Notary Public in and for said County.

40 EXHIBIT "3."

Notice to Tax-payers.

Sale of lands for unpaid special assessments.

STATE OF MICHIGAN, }
City of Detroit. }

Notice is hereby given that pursuant to the law there will be sold at the office of the receiver of taxes, in the city hall, in the city of Detroit, State of Michigan, on Monday, the sixteenth day of April, A. D. 1900, at public auction, commencing at the hour of nine o'clock (local time) in the forenoon of said day, the several lands, tenements, hereditaments, and premises, as hereinafter described, each parcel or description separately, for the lowest term of years for which any person will offer to take the same in consideration of advancing the sum or sums which were assessed by the common council of said city and for the special purposes hereinafter set forth, unless the said sum or sums, with the costs and charges thereon, shall before that time be paid or satisfied which the owners, occupants of, or parties in interest therein in said lands, tenements, hereditaments, and premises against whom said sum or sums have been assessed are hereby required to do. Said sale will be continued from day to day (Sundays excepted) until the same are sold.

For Paving Streets—1896.

No. of roll—To whom assessed—Description of property.

Roll 363; for grading and paving Blaine Ave. from the west curb line of Woodward Ave. to the east curb line of Hamilton boulevard; F. W. Dickinson's Blaine Ave. lot 103, McLaughlin
41 Bros.' sub. of O. L. 4 and the s'ly 150 ft. of O. L. 5 of sub. of ¼ sec. 45, 10,000-acre tract:

Part 4.

Amount	$108.13
Charges	2.54
Interest	30.67
Collection fees	5.53
Advertising	.43
Total	$147.30

Detroit, March 19th, 1900.

THOS. M LUCKING,
Receiver of Taxes.

Filed in clerk's office April 6, 1900.
WALTER S. HARSHA, *Clerk.*

42 *Answer.*

Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

RALZEMOND A. PARKER, Complainant,
v.
THE CITY OF DETROIT, THOMAS M. LUCKING, Receiver of Taxes of the City of Detroit, and WILLIAM B. THOMPSON, Treasurer of the City of Detroit, Defendants. } No. 3666.

The answer of the above-named defendants to the complainant's bill of complaint in said cause.

These defendants, saving to themselves the benefits of the many imperfections in said bill of complaint and claiming the benefit of a demurrer thereto, for answer to said bill of complaint and to so much thereof as they are advised should be answered, say:

First. They admit the allegations contained in paragraphs 1, 3, 5 to 21, inclusive, and 26, 27, and 28.

Second. They admit that the city of Detroit was granted a charter by the legislature of the State of Michigan, as alleged in para-
43 graph 2 of said bill of complaint, and that all its general powers are defined in said charter, but they aver that said city possesses powers inherent to our form of government which cannot be taken away by the State and are not granted by it.

Third. They deny the conclusions of law asserted in paragraphs 22 and 23.

Fourth. They deny the conclusions of law in paragraphs 24 and 25, and also the facts as therein stated. They aver that the charter provides for notice to all tax-payers who are called upon to pay special assessments such as those mentioned in the bill of complaint, and that the complainant and all other persons interested in the assessment-rolls mentioned in complainant's bill of complaint received the notice provided for by law.

They further aver that although such notice was given the com-

plainant did not appear and complain of his assessment made in either of said assessment-rolls and in no way objected to it.

They aver further that said complainant had a right under the law to complain of the assessment if, for any reason, it was unjust or wrong, but that he took no steps whatever to inform the municipal authorities or any of them that he claimed said assessments to be unjust, nor did he make any attempt whatever to have them set aside or cancelled until the beginning of this suit.

These defendants further aver that said complainant's property was benefited by said improvements to an amount greater than the assessments against him or his said property shown by said assessment-rolls.

44 They aver further that the fact is that when a street is paved within said city the actual benefit to the property in the assessment district provided by law is always greater than the amount of the assessment made to defray the cost of such improvement.

Fourth. As to the allegations contained in paragraphs 4 and 29 these defendants have no knowledge, but leave the complainant to his proof thereof.

Fifth. As to paragraph 28½ contained in said bill of complaint, these defendants have no knowledge of the facts therein alleged, but aver that they are wholly immaterial under the law of Michigan, and, if true, afford no ground of relief, and they therefore claim the benefit of a demurrer to said paragraph.

Sixth. These defendants, further answering, say that said complainant, while said improvements were going forward, and knowing that the city of Detroit was incurring obligations which would have to be fulfilled, stood idly by and took no steps to protect his rights, if any he has, in the premises, and has stood silent for six years and upwards, and is therefore guilty of laches and is estopped from claiming relief in a court of equity.

Seventh. These defendants, further answering, say that the facts shown in this case are not such as to give this court jurisdiction in the premises, and they claim the benefit thereto the same as though they had interposed a plea to the jurisdiction of this court.

45 Wherefore, by reason of the foregoing, these defendants pray to be hence dismissed with their costs.

THE CITY OF DETROIT,
By CHARLES FLOWERS,
Corporation Counsel.
THOS. M LUCKING,
Receiver of Taxes.
W. B. THOMPSON, *Treasurer.*

Filed in clerk's office May 16, 1900.
WALTER S. HARSHA, *Clerk.*

46 *Order Entered Setting Case for Hearing at the June Term.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Wednesday, the sixteenth day of May, in the year one thousand nine hundred.

Present: The Honorable Henry H. Swan, district judge.

RALZEMOND A. PARKER *v.* CITY OF DETROIT, THOMAS M. LUCKING, Receiver of Taxes; William B. Thompson, City Treasurer.	In Equity. No. 3666.

By consent, this cause is hereby set for hearing at the June term, the day to be hereafter fixed by the court.

47 *Replication.*

Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

RALZEMOND A. PARKER *v.* THE CITY OF DETROIT, THOMAS M. LUCKING, Receiver of Taxes, and William B. Thompson, City Treasurer.	No. 3666.

The replication of Ralzemond A. Parker, complainant, to the answer of the City of Detroit, Thomas M. Lucking, receiver of taxes, and William B. Thompson, city treasurer, defendants.

This repliant, saving and reserving to *it*self all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by said repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove,
48 as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

BACON & YERKES,
Solicitors for Complainant.

Filed in clerk's office May 26, 1900.

WALTER S. HARSHA, *Clerk.*

49 *Stipulation that Bill of Complaint be Amended.*

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

RALZEMOND A. PARKER
v.
THE CITY OF DETROIT, THOMAS M. LUCKING, Receiver of Taxes of the City of Detroit, and William B. Thompson, Treasurer of the City of Detroit. } No. 3666.

It is hereby stipulated and agreed by and between the parties hereto that paragraphs 10, 17, and 18 of said bill of complaint may be amended to read as follows:

"10. That on the 25th day of March, 1897, said lot 103 was sold for the taxes assessed thereon for the paving of Woodward avenue and bid off to the City of Detroit for ninety-nine years; that the time for redemption from said sale has expired and the said sale has become absolute, and the City of Detroit now claims the title to and the right to the possession of said lot under said sale for said period of ninety-nine years.

"17. That on the 25th day of March, 1897, said lot was sold for the taxes assessed on part one of said roll for the paving of Blaine avenue and bid off to the City of Detroit for ninety-nine years; that the time for redemption from said sale has expired and said sale has become absolute, and the said City of Detroit now claims the
50 title to and the right to the possession of said lot under said sale for said period of ninety-nine years.

"18. That on the 28th day of March, 1898, said lot was sold for the taxes assessed on part 2 of said roll for the paving of Blaine avenue, and bid off to the City of Detroit for ninety-nine years; that the time for redemption from said sale has expired, and said sale has become absolute, and said City of Detroit now claims the title to and the right to the possession of said lot under said sale for said period of ninety-nine years."

It is further stipulated and agreed that the answer of defendants to said bill of complaint shall stand as the answer to the amended bill of complaint.

BACON & YERKES,
Sol'rs for Complainant.
CHAS. FLOWERS,
Sol'rs for Defendants.

Filed in clerk's office June 20, 1900.
WALTER S. HARSHA, *Clerk.*

51 In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

RALZEMOND A. PARKER
v.
CITY OF DETROIT, THOMAS B. LUCKING, and WILLIAM B. Thompson. } No. 3666.

Testimony on behalf of the defendants, taken before Walter S. Harsha, United States commissioner, at his office, 306 P. O building, on Friday, June 22, 1900.

Appearances: Elbridge F. Bacon, Esq., of the firm of Bacon & Yerkes, for the complainant; C. D. Joslyn, Esq., assistant corporation counsel, for the defendants.

FRED E. FARNSWORTH, a witness produced on behalf of the defendants, being first duly sworn, in answer to interrogatories propounded to him by Mr. Joslyn, testified as follows:

1 Q. You are a resident of the city of Detroit?
A. Yes, sir.
2 Q. Born here?
A. Yes, sir.
3 Q. What is your age?
A. 47.
4 Q. You have been city assessor of the city of Detroit?
52 A. Yes, sir.
5 Q. From what period to what period?
A. From July 1, 1891, to November, '97.
6 Q. And what were your duties as city assessor?
A. The assessment of property, real and personal, in thec city of Detroit.
7 Q. You may state some of the methods by which you acquired general knowledge of property values.
A. Well, principally in going over the territory of the city assigned to an assessor each year—that is, to go through a street, up one side and down the other, taking in the class of property, improvements and property, from year to year.
8 Q. Keeping track of sales?
A. Yes; keeping track of sales and investigating sales.
9 Q. And mortgages?
A. Well, all those things are investigated to a certain extent by the office and kept track of.
10 Q. And also, I suppose, now and then by making inquiry of people in the vicinity of various properties?
A. Yes, sir.
11 Q. I suppose you took whatever means you could from time to time and what came under your observation to add to your general knowledge of values?
A. Yes, sir.
12 Q. Are you able to state, from your experience as city assessor

and examination of real-estate values in the city of Detroit, the general effect which paving a street has upon abutting property?

53 Objected to by counsel for complainant as immaterial and because there is not sufficient data in the question to enable him to give an intelligent answer to the question.

A. Yes, sir.

13 Q. What effect does it have?

Same objection.

A. It increases the value.

14 Q. Are you able to state generally whether the increase of value equals or exceeds the average cost of paving?

Objected to by counsel for complainant as incompetent and immaterial and for the further reason that the statute and charter under which the assessment is made for special improvements does not warrant any such investigation and the terms forbid it.

A. We always considered that, generally speaking, it did.

15 Q. Are you able to state whether or not it is the general custom among those dealing in real estate to increase the selling price of their property on a street after it has been paved?

Objected to by counsel for complainant as incompetent, immaterial, and irrelevant.

(15 Q. continued:) I am not asking as to individuals cases, but generally speaking.

54 A. Generally speaking, that is the impression. Of course, individual cases did come to my notice, and I had personal cases where they looked upon paving as an improvement, and the land values were increased thereby.

No cross-examination.

It is hereby conceded by counsel for defendants that the facts set forth in paragraph 4 of the bill of complaint are correct.

It is also conceded that Woodward avenue and Blain- avenue were public streets prior and at the time these taxes were levied.

It is also conceded that Woodward avenue is one of the original main trunk lines of the city of Detroit.

Counsel for defendants offers in evidence the assessment-rolls for the assessment of Woodward avenue, paving lot 103, and also the assessment-rolls for paving Blain- avenue.

The same is objected to by counsel for complainant.

Filed in clerk's office June 25, 1900.

WALTER S. HARSHA, *Clerk.*

55 *Motion for Preliminary Injunction Argued in Part.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room, in the city of Detroit, on Monday, the twenty-fifth day of June, in the year one thousand nine hundred.

Present: The Hon. Henry H. Swan, district judge.

RALZEMOND A. PARKER
v.
CITY OF DETROIT, THOMAS M. LUCKING, Receiver of Taxes; William B. Thompson, City Treasurer. } In Equity. No. 3666.

In this cause a motion for a preliminary injunction is argued by counsel in part.

56 *Motion for Preliminary Injunction Argued and Submitted.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room, in the city of Detroit, on Wednesday, the twenty-seventh day of June, in the year one thousand nine hundred.

Present: The Hon. Henry H. Swan, district judge.

RALZEMOND A. PARKER
v.
CITY OF DETROIT, THOMAS M. LUCKING, Receiver of Taxes; William B. Thompson, City Treasurer. } In Equity. No. 3666.

In this cause motion for preliminary injunction is further argued by counsel for respective parties and submitted.

57 *Final Decree.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court-room, in the city of Detroit, on Monday, the twenty-eighth day of July, in the year one thousand nine hundred.

Present: The Honorable Henry H. Swan, district judge.

RALZEMOND A. PARKER
v.
CITY OF DETROIT, THOMAS M. LUCKING, Receiver of Taxes; WILLIAM B. THOMPSON, City Treasurer. } In Equity. No. 3666.

This cause having come on to be heard on the bill of complaint filed therein, the answer of the defendants thereto, the replication of

the complainant to said answer, and upon proofs taken in
cause, and after hearing Elbridge F. Bacon, of the firm of Baco
Yerkes, solicitors for complainant, and R. A. Parker, in pro. per
in behalf of the complainant, and Charles Joslin in behalf of
defendants, and the court having given same due considerat
thereupon it is ordered, adjudged, and decreed as follows, viz:

1. That the complainant is and has been the owner and is
has been in actual possession of lot No. 103 of McLaugh
58 Bros'. subdivision of outlot four and the southerly one h
dred and fifty feet of outlot five of the subdivision of quar
section forty-five of the ten-thousand-acre tract, being situate in
city of Detroit, county of Wayne, and State of Michigan, as alleg
in his said bill of complaint.

2. That the City of Detroit claims title to a lien upon said lot
taxes assessed thereon for the paving of Woodward avenue a
Blaine avenue, as alleged in said bill of complaint.

3. That the taxes assessed on said lot No. 103 for the paving
Woodward avenue, and the sales of said lot to the city of Detroit
said taxes, and the title of said city acquired under and by virt
of said sales, be, and the same are hereby, set aside and declar
null and void as against the complainant, his heirs and assigns,
a cloud upon the title of the complainant, and that the said City
Detroit, Thomas M. Lucking, receiver of taxes for the city of D
troit, and William B. Thompson, treasurer of the said city of D
troit, and their and each of their successors in office, be, and a
hereby, perpetually enjoined and restrained from collecting or a
tempting to collect said assessments, and from selling and conve
ing or attempting to sell and convey said lot or any interest therei
and from advertising and selling or attempting to advertise and se
said lot or any interest therein for said taxes assessed thereon.

4. That the taxes assessed on said lot No. 103 for the paving
Blaine avenue, and the sales of said lot to the city of Detroi
59 for said taxes, and the title of said city acquired under an
by virtue of said sales, be, and the same are hereby, set asid
and declared null and void as against the complainant, his heirs an
assigns, as a cloud upon the title of the complainant, and that th
said City of Detroit, Thomas M. Lucking, receiver of taxes for the
city of Detroit, and William B. Thompson, treasurer of the said city
of Detroit, and their and each of their successors in office, be, and
they are hereby, perpetually enjoined and restrained from collecting
or attemping to collect said assessments, selling and conveying o
attempting to sell and convey said lot or any interest therein, and
from advertising and selling or attempting to advertise and sell said
lot or any interest therein for said taxes assessed thereon.

5. It is further ordered, adjudged, and decreed that the said com
plainant recover from said defendants the cost of his suit, and that
he have execution therefor.

60 In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

RALZEMOND A. PARKER, Complainant,
vs.
THE CITY OF DETROIT, THOMAS M. LUCKING, Receiver of Taxes, and WILLIAM B. THOMPSON, City Treasurer, Defendants.

Bacon & Yerkes, solicitors for complainant.
Charles D. Joslyn, ass't corporation counsel, for defendants.

SWAN, *J.*:

The bill in this cause was filed to set aside certain assessments and tax sales of complainant's land for the paving of Woodward and Blaine avenues, in the city of Detroit. It is conceded that the complainant is the owner of the property assessed, and is now and has been in actual possession of the same since August, 1893. The property consists of a house and lot on the corner of Woodward and Blaine avenues, with a frontage on Woodward avenue of 68.89 feet, and on Blaine avenue of 200 feet. The value of the premises is admitted to be $10,000 and upwards, and they have a rental value of $800 per year.

In December, 1892, proceedings were taken by the common council of Detroit for the paving of Woodward avenue, and in March, 1893, the contract was let for paving said avenue from Pallister avenue to the Joy road for the sum of $55,634.78. An assess-
61 ment-roll in four parts for the *for the* expense of the work of grading and paving was made by the assessors of the city of Detroit, and the property of complainant was assessed thereunder for the aggregate sum of $491.44. The entire cost and expense of paving Woodward avenue from Pallister avenue to the Joy road, except the cost of the paving of intersection of streets and alleys, was assessed on the property abutting on Woodward avenue between said streets *pro rata*, according to the frontage thereof on Woodward avenue. On the 25th day of March, 1897, complainant's property was sold for the taxes so assessed thereon, and was bid off to the City of Detroit for the term of ninety-nine years. Redemption from this sale expired March 25th, 1898. The City of Detroit now claims title to said lot under said sale for the said term of ninety-nine years.

In February, 1896, proceedings were taken to pave Blaine avenue from Woodward avenue to the Hamilton boulevard, and the paving was contracted for at the sum of $11,462.32; assessment-roll No. 363, for defraying the expense of making improvements and paving Blaine avenue, was made in four parts by the assessors of the city of Detroit. The amount assessed against the property of complainant on said lot for said paving was the sum of $442.68.

The entire cost and expense of paving Blaine avenue between Woodward avenue and Hamilton boulevard, except the cost of paving the intersection of streets and alleys, was assessed on the property abutting on Blaine avenue between the streets mentioned *pro rata*, according to the frontage thereof on Blaine avenue.

It appears from the proofs that complainant's lot has a
62 frontage of 88.89 feet on Woodward avenue and 200 feet on Blaine avenue, while the other lots on Blaine avenue assessed under said assessment-roll for said paving are 127½ feet in depth and have a frontage varying from forty to fifty feet.

On the 25th day of March, 1897, complainant's lot was sold for the taxes assessed on part 1 of the roll for paving Blaine avenue and bid*d* off to the City of Detroit for the term of ninety-nine years. On March 28th, 1898, the lot was sold for the taxes assessed on part two of the roll and bid off to the City of Detroit for a term of ninety-nine years. On the 19th day of April, 1899, the lot was sold for the taxes assessed on part three of said roll and bid off to the City of Detroit for the term of ninety-nine years. On the 16th day of April, 1900, the property was sold and bid off to the City of Detroit for the term of ninety-nine years.

On the first three sales of this lot for the paving of Blaine avenue the period of redemption has expired, and said sales have become absolute, and the city now claims title to said premises thereunder.

The provisions of the charter of the city of Detroit under which said paving was done and assessment and sales had are sections 33, 34, 35, and 43 of chap. 11 of the charter of the city of Detroit.

Without quoting these at length, it is sufficient to say that they authorize the common council to enter upon contracts for grading and paving and repaving its streets, and to cause to be assessed the expense of such work upon the lots and real estate made subject to such assessment, excepting the cost of repaving and cost of cross-
walks and work at the intersection of cross-streets; the lots
63 and parcels of real estate situate on the streets and fronting the portion ordered to be improved are declared to constitute one local assessment district, unless subdivided into two or more by the action of the common council; that the cost and expense of such improvement, except for that part of the line for intersection of cross-streets and alleys, and the cross-walks at such intersection, and for repaving streets, alleys, and highways, shall be assessed ratably, according to their extent of frontage on said lots, parts of lots, or parcels of real estate directly fronting on and within the local assessment district.

Provision is made for a modification in exceptional cases of the assessment, but this provision has no concern with any feature of this case. The charter definition of the word "front" is as follows:

SEC. 36. "The word 'front' as used in the act shall be construed to mean that part of a lot or property or parcel of land which directly abuts on that part of the street to be improved."

The board of assessors are required when necessary to make a list of all the lots or parcels of land constituting the local assessment district, with the name or owner of occupant on each, so far as can be ascertained, and the length of front of each lot or parcel fronting directly on such improvement, which board shall then assess the cost and expense of the work chargeable, as aforesaid, upon the property of said lots rateably upon the separate lots and parcels of

real estate according to the length of front thereof. When the assessment-roll is thus completed said board shall give notice by at least five publications in the city papers that such roll is completed and will remain in their office for twelve days from the first
64 publication of said notice for the inspection of all concerned. At the expiration of said twelve days said board shall, after any needful revision and correction of said roll, sign the same and report it to the common council. Said council may then confirm the same, or may, when it shall deem necessary, refer the same back to said board for further revision or corrections; and when the same shall be correct to the satisfaction of said council, it shall confirm the same.

It will be seen from these sections of the charter that the common council is required to assess the entire cost of paving upon the property abutting on the street *pro rata* according to the foot front of such property, without any reference to the question of benefits. The only notice required to be given to the lot-owner is that required to be given by publication in the city newspaper, that the roll is completed and will remain in the office of the assessors for the inspection of all concerned. The charter provides no tribunal having any authority to reduce the assessments or to review the amount thereof, except for the purpose of ascertaining that the apportionment of the total expense among the lot-owners according to the foot front of their respective properties is mathematically correct—or, in other words, that his aliquot portion of the expense of the improvement has been correctly computed according to the frontage of his land upon the street improved.

No provision is made for any hearing as to the extent of the benefit, if any, to the property by the improvement, or whether such benefit equals the assessment made upon the respective parcels of property.

A restraining order was issued, and subsequently, upon notice, a hearing was had to the application for a perpetual injunction
65 restraining the city from attempting to enforce the taxes and assessments on which the sales of complainant's premises were based, and from claiming title thereto under said sales. At the same time of the motion for injunction the case came on for hearing upon pleadings and proofs.

It is the claim of complainant that the charter in the provisions mentioned that the entire cost of the street improvements, except for street and alley crossings, &c., shall be assessed against the abutting property by the fronting measurement without any regard to the special benefits received by the property or their relation to the cost of the improvement is in conflict with the 14th amendment of the Constitution of the United States and is null and void; that such legislation constitutes taking of property without just compensation and is a denial of equal protection of the law. The case of The Village of Norwood *vs.* Baker, U. S., 269, is the foundation for this position, and seems fully to sanction it. Since the decision of that case the question presented has been fully considered in the

following cases, among others, all holding that assessment-like that here complained of are in conflict with the Federal Constitution:

Hutcheson *vs.* Storrie, 92 Tex., 685;
Loeb *vs.* Trustees, 91 F. R., 37;
Fay *vs.* City of Springfield, 94 F. R., 409;
Charles *vs.* City of Marion, 98 F. R., 166;
Charles *vs.* City of Marion, 100 F. R., 361;
Lyon *vs.* Tonawanda, 98 F. R., 361;
Cowley *vs.* City of Spokane, 99 F. R., 840;

and has been so well discussed by Judges Baker, Cox, Thompson, Hanford, and Phillips as to leave little, if anything, to be said in support of their conclusions.

66 The supreme court of Michigan has declined to depart from its decisions sustaining the constitutionality of like statutes providing for assessments per foot front, on the ground that the ruling in Baker *vs.* Norwood must be confined to the facts of that case and have no application to an assessment for paving. With all respect for that learned tribunal, I am constrained under the cases cited to a different opinion of the decision and to follow the Supreme Court of the United States upon the construction of the 14th amendment of the Federal Constitution.

A decree therefore will be entered in accordance with the prayer of the bill and a perpetual injunction will issue as prayed.

Detroit, July 30th, 1900.

HENRY H. SWAN,
District Judge.

67 *Petition for and Order Allowing Appeal.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

RALZEMOND A. PARKER
v.
THE CITY OF DETROIT, THOMAS B. LUCKING, and WILLIAM B. THOMPSON. } No. 3666.

The above-named defendant, conceiving itself aggrieved by the final decree entered on the 28 of July, A. D. 1900, in the above-entitled cause, does hereby appeal from said decree to the Supreme Court of the United States, and it prays that this its appeal may be allowed, and that a transcript of the record, together with the assignments of error and proceedings and the papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated Detroit, this 30th day of July, in the year of our Lord nineteen hundred.

TIMOTHY E. TARSNEY,
Solicitor for Defendant and Appellant.

And now, to wit, on this 30th day of July, in the year of our Lord nineteen hundred, it is ordered that the appeal in the above-entitled cause be allowed as prayed for.

HENRY H. SWAN,
District Judge.

Filed in clerk's office July 30, 1900.
WALTER S. HARSHA, *Clerk.*

68 *Assignments of Error.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

RALZEMOND A. PARKER
v.
THE CITY OF DETROIT, THOMAS B. LUCKING, WILLIAM B. Thompson, Treasurer. } No. 3666.

And now comes the above-named defendant, by Timothy E. Tarsney, its solicitor, and says that the circuit judge who rendered the final decree herein erred in the following particulars, namely:

1. In holding and decreeing that the assessment of the special taxes sought to be enjoined in this suit is illegal, in that the charter of the city of Detroit does not provide adequate provisions for review by the persons assessed of the assessment-roll and the taxes assessed th-reon.

2. In holding and decreeing that said complainant did not have an opportunity to be heard upon appeal from the assessment-roll made upon complainant's lands and premises.

69 3. Said circuit judge erred in holding and decreeing that the taxes assessed upon complainant's lands were illegal, for the reason, as stated in said decree, that the assessment in said assessment-roll was void by reason of having been assessed upon complainant's property by the frontage thereof upon the streets paved.

4. Said circuit judge erred in holding and decreeing that the taxes assessed upon complainant's lands were illegal for the reasons as stated in said decree, that the assessment as made was not made according to benefits and advantages to each part and parcel of property therein assessed in proportion to the benefits derived by the making of the improvements on said streets.

5. Said circuit judge erred in refusing to hold and decree that said complainant was estopped from questioning the validity of the assessment made upon his said lots and property in the bill of complaint described, for the reason that said complainant had acquiesced therein, having knowledge that the defendant was performing the work of paving the street in front of his property and expending large sums of money thereon, he made no objection thereto.

6. Said circuit judge erred in refusing to hold and decree that said complainant could only complain and obtain relief in a court

of equity to the extent to which he could or did show that he would be injured by reason of said assessment, and in refusing to award to said defendant in said decree the sum or sums which it was found
said complainant's lands and premises had been benefited by
70 reason of the making of the improvements for which the taxes sought to be enjoined were levied and assessed.

7. Said circuit judge erred in decreeing that the defendant The City of Detroit should be restrained from enforcing the assessment made upon said complainant's lands and in holding said assessment void.

8. Said circuit judge erred in rendering the decree in favor of the complainant and against the defendant herein.

CITY OF DETROIT,
TIMOTHY E. TARSNEY,
Corporation Counsel, Solicitor for Defendant.

Filed in clerk's office July 30, 1900.
WALTER S. HARSHA, *Clerk.*

71 *Bond on Appeal.*

Know all men by these presents that we, The City of Detroit, as principal, and William B. Thompson and Timothy E. Tarsney, as sureties, all of Detroit, Michigan, are held and firmly bound unto Ralzemond A. Parker in the full sum of five hundred dollars, to be paid to the said Ralzemond A. Parker, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals this thirtieth day of July, in the year of our Lord nineteen hundred.

Whereas lately, at a session of the circuit court of the United States for the eastern district of Michigan, southern division, in equity, in a suit pending in said court between Ralzemond A. Parker and The City of Detroit, Thomas B. Lucking, and William B. Thompson, defendants, a final decree was entered against the said City of Detroit and Thomas B. Lucking and Wm. B. Thompson, and the said defendants, considering themselves ag-rieved by the said final decree, entered on the 30tl. day of July, 1900, have appealed from said decree to the Supreme Court of the United States, which said appeal has been duly allowed by the Hon. Henry H. Swan, judge of said circuit court, in equity, and a citation, directed to the said Ralzemond A. Parker, citing and admonishing him to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date thereof, has been duly issued and signed by the said judge:

72 Now, the condition of the above obligation is such that if the said City of Detroit and Thomas B. Lucking and Wm. B. Thompson shall prosecute said appeal to effect and answer all dam-

ages and costs *and* if they fail to make their appeal good, then the above obligation to be void; else to remain in full force and virtue.

THE CITY OF DETROIT, [L. S.]
By F. A. BLADES, *Controller.* [L. S.]
WM. B. THOMPSON. [L. S.]
TIMOTHY E. TARSNEY. [L. S.]

I hereby approve the foregoing bond.

HENRY H. SWAN,
District Judge.

Detroit, July 30, 1900.

Filed in clerk's office July 30, 1900.
WALTER S. HARSHA, *Clerk.*

73 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Ralzemond A. Parker, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the eastern district of Michigan, southern division, in equity, wherein Ralzemond A. Parker is complainant and appellee and the City of Detroit, Thomas B. Lucking, and William B. Thompson, treasurer, *is* defendant- and appellant-, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 30th day of July, in the year of our Lord nineteen hundred, and of the Independence of the United States the one hundred and twenty-fourth.

HENRY H. SWAN,
District Judge.

Attest: WALTER S. HARSHA, *Clerk.*

74 [Endorsed:] No. —. The United States circuit court eas. dis. of Mich., so. div., in equity. Ralzemond A. Parker, complainant, *vs.* City of Detroit *et al.*, defendant-. Citation. Timothy E. Tarsney, attorney for def., Majestic building. Filed in clerk's office July 30, 1900. Walter S. Harsha, clerk.

75 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

RALZEMOND A. PARKER
v.
THE CITY OF DETROIT ET AL. } No. 3666.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Walter S. Harsha, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify and return to the claim of appeal of the above-named defendants that the above and foregoing is a true copy of the record and proceedings in said cause, together with the testimony; that I have compared the same with the original and it is a true and correct transcript therefrom and of the whole thereof.

Seal of the Circuit Court, Eastern District of Michigan.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Detroit, in said district, this 15th day of August, in the year one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fifth.

WALTER S. HARSHA, *Clerk.*

[Endorsed:] In the Supreme Court of the United States. The City of Detroit, Thomas B. Lucking, receiver of taxes; William B. Thompson, city treasurer, appellants, *v.* Ralzemond A. Parker, appellee. Return to claim of appeal.

Endorsed on cover: File No., 17,896. E. Michigan C. C. U. S. Term No., 411. The City of Detroit, Thomas B. Lucking, and William B. Thompson, appellants, *vs.* Ralzemond A. Parker. Filed September 4th, 1900.